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CHARLES ELMORE CROP
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No. 531

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

JOHN BOSEMAN, *Petitioner*,

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Respondent

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI

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MAY IT PLEASE THE COURT:

The opinion of the Circuit Court of Appeals of the United States for the Fifth Circuit in this case is found in 84 Fed. (2d), page 701; likewise, it is found in the record filed herein on pages 234-241. In such opinion the Circuit Court of Appeals made full findings of fact, all supported by the record.

Omissions from the petition of important facts, and the inclusion of statements which, in respondent's opinion, are not in accord with the record, compel a longer reply than would be proper, ordinarily.

In March, 1932 (R. p. 86), the Gulf Oil Corporation of Pennsylvania (R. pp. 86 and 136), a Pennsylvania corporation (R. p. 144), made written application in Pittsburgh, Pennsylvania (R. p. 86), to the Connecticut General Life Insurance Company, a Connecticut corporation (R. p. 144), for the issuance and delivery to it of a policy of insurance commonly known as a "group policy." This application requested that the policy be issued to the Gulf Oil Corporation of Pennsylvania in Pennsylvania and be made effective April 1, 1932, and be governed by the laws of that Commonwealth (R. p. 86). After negotiations, all taking place in Pennsylvania and Connecticut (R. pp. 136-137), had solely between the Gulf Oil Corporation of Pennsylvania and the Connecticut General Life Insurance Company (R. pp. 136-137), such policy, numbered G5039R (R. p. 67), was issued and thereafter delivered to the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania (R. p. 137), bearing date of April 1, 1932) R. pp. 53; 137-138). This policy contained the following provision:

"This contract is issued and delivered in the City of Pittsburgh, in the Commonwealth of Pennsylvania, and is governed by the laws of that Commonwealth" (R. p. 85).

Nowhere in said policy was the State of Texas mentioned. Employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary companies in the various States of the Union, and in foreign countries, were insured by such policy (R. p. 142).

This policy was issued for the term of one year (R. p. 69), in consideration of the application of the Gulf Oil Corporation of Pennsylvania, the payment of a binding premium of One ($1.00) Dollar and the payment of the further premiums as provided in such policy (R. p. 69). In addition to such One ($1.00) Dollar binding premium, the policy made further provision for the establishment, on the effective date of said policy, as well as on each annual policy renewal date,

of an average annual premium rate (R. p. 78). The policy provided that the premiums, in addition to the binding premiums, were due to the insurance company immediately after the effective date of the group contract (R. p. 78). If the premiums were not paid when due, a period of thirty-one days' grace was allowed to the Gulf Oil Corporation of Pennsylvania for the payment thereof (R. p. 79).

Prior to the time that group contract G5039R was issued there was effective between the Connecticut General Life Insurance Company and the Gulf Oil Corporation of Pennsylvania two other policies of group insurance, known as G5039 and G5545 (R. pp. 129-136, 145-148). Each of these two earlier policies was likewise applied for, issued and delivered in the Commonwealth of Pennsylvania (R. pp. 129-136, 145-148). The written application made by the Gulf Oil Corporation of Pennsylvania in Pittsburgh, Pennsylvania, for the issuance of group contract G5039R, requested that the previous two policies be cancelled March 31, 1932 (R. pp. 86, 147), and such was done (R. pp. 129-130, 147).

The new policy, to-wit, G5039R, specified the terms and conditions under which it insured the employees of the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies (R. pp. 67-68). The benefits extended by such group contract were those providing for payment upon death or the permanent total disability of an employee insured thereunder (R. pp. 68-71). All employees of the Gulf Oil Corporation of Pennsylvania and affiliated and subsidiary companies were eligible for insurance thereunder when they had completed the required period of service specified therein (R. pp. 72-74). The amount of insurance which the employee might receive under the group contract was dependent upon length of service and the salary received by him (R. pp. 74-77). An employee who elected insurance under such group contract was insured automatically on the date he became eligible (R. p. 73). This election of the employee

was made by completing any form of pay roll deduction order approved by Gulf Oil Corporation of Pennsylvania (R. p. 73). On the first of each month the Gulf Oil Corporation of Pennsylvania was required to notify the insurance company with respect to the employees who had become eligible for insurance under such policy, or whose insurance had been cancelled by reason of termination of employment; but even though such notice was not given at such time, the employee's insurance became effective upon his date of eligibility if the notice were given within a reasonable time after such (R. p. 81). The employee's insurance was terminated under such group contract when his employment with the Gulf Oil Corportation of Pennsylvania and its affiliated and subsidiary companies ended (R. pp. 81-83). The policy further provided:

"The Company will issue to the Employer for each insured employee an individual certificate. This certificate will in no way void any of the terms or conditions outlined in the policy, but will show the insurance protection to which the employee is entitled, to whom payable, and the following conversion privilege:" (R. p. 84.)

And again:

"The policy and the application of the Employer, copy of which is attached to and made a part of this policy, and the applications of the employees, if any, shall constitute the entire contract between the parties" (R. p. 85).

And again:

"Only the President or a Vice-President, the Secretary or Assistant-Secretary, has power on behalf of the Company to make or modify this contract of insurance" (R. p. 85).

One of the conditions of a claim for permanent total disability benefits by an employee insured under such group contract was that such employee should give written notice of

such claim to the Connecticut General Life Insurance Company during his period of employment or within sixty days thereafter (R. pp. 84-85).

John Boseman had no connection with the securing of this policy of group insurance (R. pp. 86, 136-138). He was an employee of the Gulf Refining Company at Port Arthur, Texas (R. p. 106), which refining company was a subsidiary or affiliated company of the Gulf Oil Corporation of Pennsynvania (R. p. 92). All transactions with reference to the various employees insured under such group contract were had solely between the Connecticut General Life Insurance Company from its Hartford, Connecticut, office and the Gulf Oil Corporation of Pennsylvania from its Pittsburgh, Pennsylvania, office (R. pp. 90-94, 136-142, 131, 149-155). The Gulf Oil Corporation of Pennsylvania paid all premiums to the insurance company which became due for insurance under such group contract, and all refunds because of unearned premiums thereunder were made by the insurance company from Hartford, Connecticut, to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania (R. pp. 138, 149). In fact, none of the subsidiary companies had any correspondence or transactions with the Connecticut General Life Insurance Company (R. pp. 136-142, 144, 144-145), but instead, the subsidiary companies dealt only with the Gulf Oil Corporation of Pennsylvania (R. pp. 90-94, 103). Likewise, no employee insured under such group contract at any time transacted any business pertaining to his insurance thereunder with the insurance company (R. pp. 138-139, 142), but instead, dealt solely with his employer (R. pp. 90-94, 103). The insurance company received no application from any employee for insurance, but instead, the insurance company was notified from Pittsburgh, Pennsylvania, by the Gulf Oil Corporation of Pennsylvania, that an employee had become insured under such group contract, or that an employee's insurance under such group contract had terminated (R. pp.

100, 139, 150, 157). If the notice stated that an employee had become insured thereunder, in accordance with such group contract (R. p. 84), the insurance company issued a certificate to the Gulf Oil Corporation of Pennsylvania, evidencing the amount of the employee's insurance under such group contract, the certificate bearing the name of the insured employee, the effective date, and the name of the beneficiary (R. pp. 139, 150). This certificate was delivered by the insurance company to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania, where the insurance company's connection with said certificate ceased (R. pp. 126-127, 139, 140, 150). At no time was the Gulf Oil Corporation of Pennsylvania, or the Gulf Refining Company, or any official or employee of either, authorized to act with reference to said group contract or any matter pertaining thereto or thereunder on behalf of the insurance carrier (R. pp. 140, 147-148). The employer represented and looked after the insurance of the employees, acting in behalf of such employees, under such contract (R. pp. 93-94, 103-104). The Gulf Refining Company did, without control of the insurance company, take a pay roll deduction order from John Boseman and other insured employees for its own records and protection (R. pp. 91-93, 99-100), but did not furnish any paper executed by John Boseman to the insurance company (R. pp. 100, 104, 124, 157). The insurance company in nowise controlled any deductions by the employer from the employee's salary (R. pp. 119, 138, 140, 157), but instead, the Gulf Oil Corporation of Pennsylvania, as it was obligated to do, paid all premiums to the insurance company on the first day of the month on the employee's insurance, under such contract (R. pp. 138, 149). In fact, the employer reimbursed itself from the employee for a portion of the premiums paid by such employer for such employee's insurance (R. p. 92), but this was done without knowledge of or control from the insurance company (R. pp. 119, 124, 157).

John Boseman, petitioner herein, had, while an employee of the Gulf Refining Company at Port Arthur, Texas, been insured under the two previous contracts (R. pp. 147-148), and was, therefore, eligible for insurance under group contract G5039R (R. p. 72). On March 7, 1932 (R. pp. 99-100), prior to the effective date of group contract G5039R (R. p. 69), the Gulf Refining Company took from John Boseman at Port Arthur, Texas, a pay roll deduction order, which authorized it to deduct a certain monthly amount from the pay roll of John Boseman for the insurance that the Gulf Oil Corporation of Pennsylvania would extend to John Boseman under group contract G5039R. This deduction order provided for a deduction of 60 cents per month per $1,000.00 of insurance held by John Boseman. The Gulf Oil Corporation of Pennsylvania was therefore seeking reimbursement from John Boseman for only a portion of the premium it paid upon him for insurance under such group contract (R. pp. 92, 119). This pay roll deduction order became a part of the permanent records of the Gulf Refining Company at Port Arthur, Texas (R. pp. 92, 100). In due course, the Gulf Oil Corporation of Pennsylvania, from Pittsburgh, Pennsylvania, notified the respondent herein at Hartford, Connecticut, that John Boseman had become insured under such group contract, effective April 1, 1932, in the amount of $4,000.00 (R. p. 150). This notice was given to the respondent about May 1, 1932 (R. p. 150), and on or about that date (R. p. 150), as the group contract provided, in accordance with the Pennsylvania statute, the respondent issued in Hartford, Connuecticut (R. p. 150), a certificate evidencing the insurance of John Boseman under such group contract, stating the amount of same, the beneficiary, the effective date of same, which was April 1, 1932 (R. pp. 51-60, 150). This certificate notified the insured employee of various terms and conditions of the group contract, quoting the same provision with refer-

ence to notice of claim within sixty days after the termination of employment (R. p. 59), as set forth in the master contract. It further notified the employee that he was insured under and subject to the terms of group contract G5039R (R. pp. 51-52, 60), which was executed and delivered in the City of Pittsburgh, Pennsylvania (R. p. 52). This certificate was delivered by the respondent to the Gulf Oil Corporation of Pennsylvania at Pittsburgh, Pennsylvania (R. pp. 150-151). Thereafter, at Port Arthur, Texas (R. p. 109), the Gulf Refining Company delivered same to John Boseman on July 20, 1932 (R. p. 100), approximately three and one-half months after he became insured under the contract here involved (R. p. 151). On October 8, 1932, his employment with the Gulf Refining Company was terminated (R. pp. 101, 107, 152-153), and his insurance under the group contract then cancelled (R. pp. 151-153). He accepted a refund from the Gulf Refining Company at that time for the remainder of the month of October, 1932, with reference to the contribution he had made to his employer, for his insurance under group contract G5039R for that month (R. pp. 102-103). Though he returned to the Gulf Refining Company in March, 1933, again seeking employment (R. pp. 102, 110), he gave no notice of a claim for permanent total disability as asserted in this suit, despite the requirements of said group contract (which requirement was quoted in his certificate), until April, 1933 (R. pp. 65, 122-123), more than six months after the termination of his employment.

The Connecticut General Life Insurance Company has not done an insurance business in the State of Texas at any time since 1917, and maintains no insurance agents of any kind or character therein (R. pp. 142-144). It has never written any insurance in the State of Texas (R. p. 143). While it has secured a permit to do business in the State of Texas, it has never complied with the further prerequisites of the Texas

law to do, and has not done, an insurance business therein (R. p. 143).

(Nine copies of respondent's original brief in the Circuit Court of Appeals are filed herewith and marked "Respondent's Appendix B," and nine copies of respondent's reply brief in the Circuit Court of Appeals are also filed herewith, marked "Respondent's Appendix C.")

Correction of Petitioner's Statements Not Supported by Record

On page 3 of the petition, petitioner states that the holding that group contract G5039R was a Pennsylvania contract ignored the obvious intention of the parties thereto. The record is to the contrary (R. pp. 85, 90, 136-138).

On page 3 of the petition it is stated that the Fifth Circuit Court of Appeals decided this case by construing Texas statutes as a basis for its judgment contra to the legislative intent and reversed the meaning given by the Texas courts. The Fifth Circuit Court of Appeals did not rely upon, interpret or refer to any Texas statute to reach its decision that the contract involved was subject to the Pennsylvania law.

On page 9 it is stated that group contract G5039R was issued to the employees of the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies. This policy was issued in Pennsylvania to the Gulf Oil Corporation of Pennsylvania, the only party applying therefor (R. pp. 136-138, 85, 86, 87, 69, 5, plaintiff's petition, lower court).

On page 9 of the petition it is stated that on April 1, 1932, the Gulf Oil Corporation of Pennsylvania and the Gulf Refining Company of Texas cancelled the two previous policies.

On page 15 of the petition it is stated that "such policies were cancelled by John Boseman, the Gulf Refining Company, and the Gulf Oil Corporation of Pennsylvania." These two prior policies were cancelled upon application of the Gulf

Oil Corporation of Pennsylvania made in Pittsburgh, Pennsylvania. Neither the petitioner herein nor the Gulf Refining Company was a party thereto (R. pp. 86, 135-136).

On page 13 of the petition it is stated that it was admitted in the Circuit Court of Appeals by respondent that the verdict of the jury in the trial court that John Boseman was totally and permanently disabled was a proper and correct verdict. Respondent admitted in the Circuit Court of Appeals that John Boseman raised an issue of fact as to his disability in the lower court (Appendix "B," p. 2).

On pages 14 and 15 it is stated that in 1918 and 1925, John Boseman made application to and received from the Connecticut General Life Insurance Company group policies G5039 and G5545. While John Boseman was insured by virtue of such two group policies, each was issued in the State of Pennsylvania to the Gulf Oil Corporation of Pennsylvania upon the sole application of such Oil Corporation (R. pp. 127, 136, 147-148).

On pages 18, 19 and 20 of the petition, the statement is made that the Texas courts in the group insurance cases there cited, because of and based upon Article 5056, held that the employer was an agent of the insurance carrier in connection with employees insured under group insurance contracts (Article 5056 of the REVISED CIVIL STATUTES OF TEXAS, found in Appendix to petition, p. 25). None of these cases passed upon, or discussed, the question of agency of the employer for the insurance carrier. None of these cases even refer to Article 5056 of the REVISED CIVIL STATUTES OF TEXAS. It is to be noted that said Article provides that one who does certain acts *on behalf of an insurance company will* "be held to be the agent of the company for which the act is done, or the risk is taken, *as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter.*" (Italics ours.) This Article does not establish agency where none, in fact, exists.

In the case of INSURANCE COMPANY v. WALKER, 94 Tex. 473, by the Texas Supreme Court, the court stated, with reference to this Article (which at the time of such decision was Article 3093, quotation p. 479):

"This law declared the person performing the act specified to be the agent of the company for which he acted, either by appointment or who assumed to act without authority for the purpose of punishing the person performing the acts, and to make him liable to the State and others for the acts so performed, and also to make him agent of the company so far as to render it liable for taxes for doing business within the limits of this State, *but that act did not purport to confer any power or authority upon such person with reference to the making of contracts or to make the insurance company liable for any act which he did except as specified in that law.* (Italics ours.)

"If the language quoted from Article 3093 be construed to refer to the chapter of which it is a part instead of the original act of the Legislature for the scope of the agency, then the effect of the law in declaring such person to be the agent of the insurance company cannot be held to confer powers to contract which are not expressed in the law, but the matter of authority would depend upon the terms of his appointment or upon facts which would show the extent of his power."

See also UNITED STATES FIDELITY & GUARANTY CO. v. TAYLOR (Amarillo Court of Civil Appeals), 273 S. W. 320 (Texas Commission of Appeals, judgment adopted and approved by Texas Supreme Court, 283 S. W. 161); MARYLAND CASUALTY CO. v. SEAY, 56 Fed. (2d) 322; MUTUAL LIFE INSURANCE COMPANY v. HILTON GREEN, 241 U. S. 613, 36 S. Ct. 676, 60 L. Ed. 1202.

Petitioner states that Article 5054 of the REVISED CIVIL STATUTES OF TEXAS (set forth in the Appendix to petition, p. 25), requires the contract here to be construed under the Texas law, and the Texas courts have so interpreted said statute. If so interpreted to apply to a contract made and de-

livered in the State of Pennsylvania, even though benefits under same are payable to a citizen in Texas, it violates the United States Constitution. AETNA LIFE INSURANCE COMPANY v. DUNKEN, 266 U. S. 389, 45 S. Ct. 129; HARTFORD ACCIDENT & INDEMNITY COMPANY v. DELTA & PINE LAND COMPANY, 292 U. S. 143, 54 S. Ct. 634; MUTUAL LIFE INSURANCE COMPANY v. LEIBING, 259 U. S. 209, 42 S. Ct. 467; ALLGEYER v. STATE OF LOUISIANA, 165 U. S. 578; HOME INSURANCE COMPANY v. DICK, 281 U. S. 397, 50 S. Ct. 338.

Upon page 23 of the petition it is stated that the Gulf Oil Corporation of Pennsylvania could derive no benefits from the group contract. It had paid a consideration therefor and obligated itself to pay the further consideration. It had applied for same, assuming all responsibility in connection therewith, to the Connecticut General Life Insurance Company. The plan of insurance was paternalistic. The Gulf Oil Corporation of Pennsylvania desired to aid is employees in this regard. It had the advantage of having the irrevocable right to provide for the protection of its employees under this contract for the term of same. It would naturally receive advantages derived through such contract through the increased happiness and contentment of, and result in the increased production by, its employees.

On page 21 of the petition it is stated that group contract G5039R, the master policy, and the certificate, were both made payable to Boseman. John Boseman is not mentioned in group contract G5039R, nor is any condition of payment to him specified therein.

On pages 4, 5, 12, 18, 19, 20 and 22 of the petition, the statement is made that the evidence showed that the Gulf Refining Company both acted, and was recognized by the insurance company, as agent of the insurance company for the purpose of this insurance. The record shows to the contrary (R. pp. 140, 157, 158, 93, 103). Petitioner apparently relies

upon two or three words segregated out of a long answer to a long question which, when considered as a whole, does not justify such conclusion. Mr. Laird testified (R. p. 121), that the Connecticut General Life Insurance Company honored transactions of the Gulf Oil Corporation of Pennsylvania or affiliated or subsidiary companies in connection with group contract G5039R "*as were in accordance with the terms of the policy.*" Certainly the insurance company honored the obligations it had assumed to the other party, the Gulf Oil Corporation of Pennsylvania. It does not follow that such Gulf Oil Corporation of Pennsylvania or the Gulf Refining Company, which companies were upon the opposite side from this respondent in contract G5039R, were the agents of this respondent.

On pages 4, 5 and 11 petitioner sets forth certain conditions prerequisite, according to his contention, that had to occur prior to the time the petitioner became insured under group contract G5039R. Petitioner states these were:

(a) *Release of claims under group contracts G5039 and G5545.* Nowhere in the record is there any requirement that such releases be taken. Such was included by the Gulf Refining Company in the pay roll deduction order taken from John Boseman for its own permanent records and which Gulf Refining Company chose to refer to as an application (R. pp. 99-100), which was neither authorized nor known to the Connecticut General Life Insurance Company (R. pp. 91-92, 100, 119). This instrument (R. pp. 99-100), which is sometimes called a release by the petitioner and again an application, and again a pay roll deduction order, was not directed to the Connecticut General Life Insurance Company, but included therein this statement: "In making this application I agree to be bound by the rules governing this insurance and I authorize the Gulf Oil Corporation of Pennsylvania and/or subsidiary and/or affiliated companies to deduct in

advance the proper amount per month from my pay to apply towards the premium of insurance" (R. p. 100), which further reveals that it was taken by the Gulf Refining Company for its own protection and of concern to the employees and employer alone (R. p. 157). This record was still at the Gulf Refining Company on July 20, 1932 (R. p. 100), and was still a part of its permanent records at the time of the trial in the lower court (R. p. 100).

(b) *Application for insurance under contract G5039R.* The group policy did specify, *as the Pennsylvania law required* (see PURDON'S PENNSYLVANIA ANN. STATUTES, Title 40, Sec. 532, in Appendix to this reply), that "the policy and application of the employer, copy of which is attached to and made a part of this policy, and the application of the employee, *if any*, shall constitute the entire contract between the parties" (R. p. 85). This instrument, whatever it might be designated, was an instrument taken, as shown above, by the Gulf Refining Company, without control, supervision or knowledge of the insurance company, and was in nowise furnished to or required by the insurance company, and became a permanent record of the Gulf Refining Company.

(c) *Pay roll deduction orders.* The foregoing, since the instrument is referred to by appellee in some instances as the pay roll deduction order, is likewise pertinent hereunder. The group policy specified (R. p. 73) "an employee may elect insurance under this policy by completing *any form of pay roll deduction order approved by the employer.*" This left the matter entirely to the employer and the employee as to the form of order and any amount deducted thereunder. The entire obligation for the payment of the premiums to the insurance company was upon, and assumed by, the Gulf Oil Corporation of Pennsylvania (R. pp. 124, 138, 149).

(d) *The certificate.* The certificate was not necessary to,

but merely evidentiary of, the insurance of John Boseman. He was insured under the group contract from April 1, 1932, until July 20, 1932 (R. p. 100), without a certificate having been received by him. Respondent did not deliver said certificate to John Boseman, or anyone else, in Texas. It was delivered to the Gulf Oil Corporation of Pennsylvania, in Pennsylvania, as the policy so required, and such final act, on the part of this respondent, took place in that State (R. p. 118, 126, 139, 140).

(e) *Payment of premiums.* There was no condition in the policy that the employee had to pay the premiums. However, the employer did set a rate of contribution that it would collect from its insured employees to cover a portion of the funds paid by the employer for such employee's insurance. This was not a condition imposed by respondent.

Before the Connecticut General Life Insurance Company knew that John Boseman's insurance was cancelled on October 8, 1932, it billed the Gulf Oil Corporation of Pennsylvania, and that company, recognizing its sole obligation to this respondent for the premiums, paid in advance to this respondent the premiums for the months of October, November and December, 1932 (R. p. 152). At such time the Gulf Refining Company, in accordance with its arrangement with John Boseman, had only collected from him by way of reimbursement to itself the sum of $2.40, his contribution to his employer for the month of October, 1932 (R. pp. 102-103).

With reference to all of these so-called prerequisites contended for by petitioner, regardless of what was necessary to be done by the petitioner to become eligible for insurance under such policy, when he did so he became insured by virtue of a binding prior contract duly made in the State of Pennsylvania, the law of which State entered into, controlled and became a part of such contract.

Petitioner on page 12 of his brief states that all payments were made in Texas with reference to claims under the master policy. This is contra to the record (R. p. 139).

The petition states on page 12 that contract G5039R was entered into with the intention to insure all employees of the Gulf Refining Company at Port Arthur, Texas, who were eligible and elected to become insured. The State of Texas is nowhere mentioned in this group contract. This contract covered employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary or affiliated companies in the various States of the Union and in foreign countries. Employees in Texas were eligible for insurance. Likewise, employees in various other States were eligible and were insured thereunder. The Gulf Oil Corporation of Pennsylvania and its subsidiary and affiliated companies alone, without intervention or control of this respondent, had the right under such group contract to locate their employees and to determine which employees (located wherever they might be) should be covered under such policy after it was issued.

Petitioner on page 15 to 16 cites certain cases by the Texas Courts of Civil Appeals to sustain his contention, stating that the opinion in the case of CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. MOORE, 75 S. W. (2d) 329, was approved by the Supreme Court of Texas. The Supreme Court of Texas did not pass on the matter, but dismissed application for writ of error in the case on the ground that the Supreme Court of Texas was without jurisdiction in the matter. As to the statement on page 16 of the petition that the opinion by the Court of Civil Appeals in METROPOLITAN LIFE INSURANCE COMPANY v. WORTEN, 70 S. W. (2d) 216, was approved by the Supreme Court of Texas, the Supreme Court of Texas [redacted] refused to grant an application for writ of error in the matter. The Texas Supreme Court has not decided a case involving the point here raised. However, in the case

of METROPOLITAN LIFE INSURANCE COMPANY v. WANN, 81 S. W. (2d) 298, in which the Fort Worth Court of Civil Appeals held that attorney's fees and penalties under Article 4736, REVISED CIVIL STATUTES OF TEXAS, could be assessed under a Metropolitan Life Insurance Company group contract, the facts therein relied upon by the insurance company being less favorable than the facts here involved, the Texas Supreme Court recently has granted a writ of error on the judgment of the Court of Civil Appeals.

PALMETTO FIRE INSURANCE COMPANY v. CONN, 272 U. S. 295, 47 Sup. Ct. 88, 71 L. Ed. 243.

Petitioner, in his application, states that the above decision is upon the facts similar to the case here involved and that the law in that case was by this Honorable Court determined contra to the holding of the Fifth Circuit Court of Appeals in the instant case.

The case of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, involved solely the question of the right of a State to impose limitations upon a foreign corporation, such limitations not being contrary to the United States Constitution, as a prerequisite for that corporation securing and retaining a license to do business in such State. In nowise was the question of what law controlled a claim by an assured under such contract involved or decided by this Honorable Court in such case. In such opinion (47 Sup. Ct., page 88), this Honorable Court stated:

"The question is whether this transaction brought the plaintiff within the taxing power of Ohio. If it did not, the power of the State to exclude the company altogether could not be used as a means to accomplish a result beyond the State's constitutional powers. Fidelity & Deposit Company of Maryland v. Tofya, 270 U. S. 246, 46 Sup. Ct. 331, 70 L. Ed. 664."

The opinions of the lower courts in the case of PALMETTO

FIRE INSURANCE COMPANY v. CONN, supra, recognized, as respondent interprets them, that the contracts themselves were contracts under the laws of the State of Michigan. PALMETTO FIRE INSURANCE COMPANY v. CONN, 9 Fed. (2d) 202 (on pages 202 and 203); CHRYSLER SALES CORPORATION v. SMITH, 9 Fed. (2d) 666 (on page 671); CHRYSLER SALES CORPORATION v. SPENCER, 9 Fed. (2d) 674 (on page 678).

The question involved in such suits, as well as the opinion of this Honorable Court, when it passed upon such question, was further so interpreted by the highest court of New York in the decision of PEOPLE v. AMARINGE, 266 N. Y. 277, 194 N. E. 754.

Subsequent to the decisions of the lower courts in the case of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, a three-judge United States District Court in the State of New York, in PALMETTO FIRE INSURANCE COMPANY v. BEHA, 13 Fed. (2d) 500, had before it the question of whether or not the license of the Palmetto Fire Insurance Company in New York should be cancelled, said State not having statutes similar to those of the three States involved in the other three suits. In its opinion this court in New York stated:

"The State cannot forbid contracts of insurance relating to risk within its limits from being made between a citizen and a corporation in another State" (quotation from page 504).

And again:

"The insurance effected under the plan is effected in Michigan and not in New York" [redacted].

And again:

"The contract here may be construed as made in a foreign State for the benefit of a third party."

The BEHA case, supra, was subsequently cited by this Hon-

orable Court with apparent approval, in the decision of FIDELITY AND DEPOSIT COMPANY OF MARYLAND v. TOFYA, 270 U. S. 246, 46 Sup. Ct. 331, 70 L. Ed. 664.

This Honorable Court, in deciding the cases involved in the appeal of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, recognized the principle that a State has the right to entirely prohibit the entry of a foreign corporation, and consequently has the right, as a prerequisite to licensing such corporation in such State, to exact of such corporation conditions so long as such conditions exacted do not violate the constitutional rights of the entering corporation. That a State, even as a condition for licensing a foreign corporation to do business in that particular State cannot force such licensed corporation to submit its contracts made in every other State to the laws, and interpretation under the laws, of the State so licensing such foreign corporation; see NEW YORK LIFE INSURANCE COMPANY v. HEAD, 234 U. S. 149, 34 Sup. Ct. 879; HARRISON v. ST. LOUIS & S. F., 232 U. S. 318, 34 Sup. Ct. 333; WESTERN UNION TELEGRAPH COMPANY v. KANSAS, 216 U. S. 1, 30 Sup. Ct. 190, 54 L. Ed. 355; NEW YORK LIFE INSURANCE COMPANY v. DODGE, 246 U. S. 357, 38 Sup. Ct. 337, in which latter case it is said:

"Under the laws of New York where the parties made the loan agreement now before us, it was valid; also it was one which the Missouri Legislature could not destroy or prevent a citizen within its borders from making beyond them by direct inhibition; and applying the principles accepted and enforced in Insurance Co. v. Head, *we think the necessary conclusion is that such a contract could not be indirectly brought into subjection to the statutes of the State and rendered ineffective through a license authorizing the insurance company there to do business.*" (Italics ours.)

The case of PALMETTO FIRE INSURANCE COMPANY v. CONN, supra, was relied upon by petitioner herein in the Cir-

cuit Court of Appeals and such cases fully discussed by such court in holding adversely to the petitioner (84 Fed. (2d) 704-705.) This case was fully discussed at pages 13-21 of respondent's reply brief in the Circuit court of appeals. (Respondent's Appendix "C.")

Points Against the Petition

POINT ONE

Neither Article 4736 nor Article 5546 of the REVISED CIVIL STATUTES OF TEXAS could constitutionally be applied to group contract G5039R and petitioner's insurance thereunder, since all of petitioner's rights were derived from, dependent upon, and subject to, a contract made in the State of Pennsylvania.

AETNA LIFE INSURANCE CO. v. DUNKEN, 266 U. S. 389, 45 S. Ct. 129; HARTFORD ACCIDENT & INDEMNITY CO. v. DELTA & PINE LAND CO., 292 U. S. 143, 54 S. Ct. 634; HOME INSURANCE CO., ET AL., v. DICK, ET AL., 281 U. S. 397, 50 S. Ct. 338; ALLGEYER v. STATE OF LOUISIANA, 165 U. S. 578; MUTUAL LIFE INSURANCE CO. OF NEW YORK v. LEIBING, 259 U. S. 209, 42 S. Ct. 467; MCBRIDE, ET AL., v. CONNECTICUT GENERAL LIFE INSURANCE CO., 14 Fed. Sup. Ct. 240; COFFIN v. LONDON & EDINBURGH INSURANCE CO., 27 Fed. (2d) 616; CONNECTICUT GENERAL LIFE INSURANCE COMPANY v. SPEER, 48 S. W. (2d) 553 (Sup. Ct. Ark.); DUVAL v. METROPOLITAN LIFE INSURANCE CO., 82 N. H. 543, 136 Atl. 400, 50 A. L. R. 1276; STATE OF NEW YORK, ET AL., v. AMARINGE (N. Y., 194 N. E. 754.

POINT TWO

The parties to group contract G5039R having specified that the Pennsylvania law would control same, and the State of Pennsylvania having a substantial interest in and connection with the contract, such expressed intent of the parties will be given force and effect.

MUTUAL LIFE INS. CO. v. HILL, 193 U. S. 551, 24 Sup. Ct. 538, 48 L. Ed. 788; SEEMAN v. PHILADELPHIA WAREHOUSE CO., 274 U. S. 403, 47 Sup. Ct. 626; MUTUAL BENEFIT HEALTH & ACCIDENT INSURANCE CO. v. BALDRIDGE, 70 Fed. (2d) 236; CLARK v. GIBBS, 69 Fed. (2d) 364; COUGHLIN v. SOUTH CAROLINA RAILWAY CO., 142 U. S. 101; PRITCHARD v. NORTON, 106 U. S. 124.

POINT THREE

Petitioner, being a third party to the contract sued upon, cannot question the validity or effect of the provision that the Pennsylvania law should control, but must accept said contract, with limitations contained therein, as he found same.

CITY v. LAMSON, 9 Wall. 477; WESTERN UNION v. SCARBOROUGH, 68 S. W. (2d) 1027 (Texas Com. App.); THOMPSON v. PACIFIC MILLS, 141 S. C. 303, 130 S. E. 619, 55 A. L. R. 1237; MAGEE v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE U. S., 244 N. W. 518 (Sup. Ct. of N. C.); KINGSLAND v. MISSOURI STATE LIFE INSURANCE CO., 66 S. W. (2d) 959 (Mo. Court of Appeals); EQUITABLE LIFE INSURANCE CO. v. HALL, 69 S. W. (2d) 977 (Ky. Court of Appeals); DAVIS v. METROPOLITAN LIFE INSURANCE CO., 32 S. W. (2d) 1034 (Tenn.); HOME MORTGAGE CO. v. RAMSEY, 49 Fed. (2d) 738; ALLAN v. MOLINE PLOW CO., INC., 14 Fed. (2d) 912; 13 CORPUS JURIS, par. 819.

POINT FOUR

Such acts as performed by the Gulf Refining Company in Texas with its employees were not done as an agent of the insurance carrier, but rather as a representative of the employees.

CONNECTICUT GENERAL LIFE INSURANCE CO. v. JUDGE SPEER, 48 S. W. (2d) 553 (S. Ct. of Ark.); ROGERS v. METROPOLITAN LIFE INSURANCE CO., 251 N. W. 312 (S. Ct. of Mich.); LEACH v. METROPOLITAN LIFE INSURANCE CO.,

261 Pac. 603 (S. Ct. of Kan.); DUVAL v. METROPOLITAN LIFE INSURANCE CO., 136 Atl. 400, 50 A. L. R. 1276; EQUITABLE LIFE INSURANCE CO. v. HALL, 69 S. W. (2d) 977; PEYTON v. METROPOLITAN LIFE INSURANCE COMPANY, 148 So. 721 (La. Court of Appeals); STATE EX REL KERNS v. CONNECTICUT GENERAL LIFE INSURANCE CO. (S. C.), 167 S. E. 833; JOINER v. METROPOLITAN LIFE INSURANCE CO. (Ga.), 151 S. E. 540.

POINT FIVE

Petitioner's rights were fixed and controlled by the group contract issued and delivered in Pennsylvania and not by the certificate, which merely evidenced his rights under the Pennsylvania contract.

ALL STATES LIFE INSURANCE CO. v. TILLMAN, 226 Ala. 245, 146 So. 393; MCBRIDE, ET AL., v. CONNECTICUT GENERAL LIFE INSURANCE CO., 14 Fed. Sup. 240; WANN v. METROPOLITAN LIFE INSURANCE CO., 41 S. W. (2d) 50 (Tex. Com. App.); METROPOLITAN LIFE INSURANCE CO. v. GREENE, 75 S. W. (2d) 703; EISEN v. JOHN HANCOCK LIFE INSURANCE COMPANY, 91 S. W. (2d) 81 (Mo.); HARDIE v. METROPOLITAN LIFE INSURANCE COMPANY, 7 S. W. (2d) 746 (Mo.); GALLAGHER v. SIMMONS HARDWARE CO., 258 S. W. 16 (Mo.); THULL v. EQUITABLE LIFE ASSURANCE SOCIETY, 40 Ohio 406, 178 N. E. 850.

POINT SIX

Employees of the Gulf Oil Corporation of Pennsylvania and its subsidiary and/or affiliated companies, located in the various States of the Union, and in foreign countries, being insured under group contract G5039R, a Pennsylvania contract, the application of the law of Pennsylvania to the rights of each under said contract gives a unified standard of duty and obligation, rather than uncertainty and confusion which would result from applying the laws of the various States of

the Union, and foreign countries, depending upon perchance where the employee might be located when his insurance under the policy became effective, and where his beneficiary might be located.

SUPREME COUNCIL OF ROYAL ARCAMUN v. GREEN, 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089; L. R. A. 1916A 771; WOODMAN v. MIXER, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, 41 A. L. R. 1384; COMMERCIAL MEN'S ASSOCIATION v. BENN, 261 U. S. 140, 43 Sup. Ct. 293, 67 L. Ed. 573.

POINT SEVEN

The question here involved is one for determination by the Federal courts, in which determination they are not controlled by decisions of the local State courts.

MUTUAL LIFE INSURANCE COMPANY v. JOHNSON, 293 U. S. 353, 55 S. Ct. 154, 79 L. Ed. 398; WASHBURN & MEON MANUFACTURING CO. v. INSURANCE CO., 179 U. S. 1, 21 S. Ct. 1, 45 L. Ed. 49; SWIFT v. TYSON, 16 Peters 1, 10 L. Ed. 865; CARPENTER v. PROVIDENCE-WASHINGTON INSURANCE CO., 16 Peters 495, 10 L. Ed. 1064.

Remarks

No law other than that of the State of Pennsylvania, with whose statutes the parties in all respects complied, was involved, entered into, or had any connection, with the making of group contract G5039R. It was specifically agreed that the law of that Commonwealth would control such contract. Respondent did not at any time prior to or after the issuance of such group contract invade Texas with reference thereto. The rights taken by petitioner under such group contract were secured by him with full notice that they were governed by and arose from a contract theretofore delivered in the Commonwealth of Pennsylvania and subject to the laws of that Commonwealth. Such group contract was complete in itself.

By applying the law of Pennsylvania the rights of the various parties interested in said contract, and their obligations thereunder, are determined by one collective and unified standard of duty and obligation, and therefore stabilized. To apply the laws, or to attempt to apply the laws, of the various States of the Union and foreign countries to the rights of employees insured thereunder, depending perchance upon the location of the particular employees when they became insured under such group contract, would give rise to nothing but uncertainty and confusion. It is impossible to draft any contract which will comply with the laws of all States and foreign countries. It would be most unfortunate if the benefits of group insurance had to be denied to employees because of this situation. The decision of the Circuit Court of Appeals of the United States for the Fifth Circuit, after full consideration, is correct and should not be disturbed by this Honorable Court.

WHEREFORE, respondent respectfully prays that the application be denied.

Respectfully submitted,

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Appendix A

PURDON'S PENNSYLVANIA STATUTES, ANNOTATED, Title 40, Section 532.

"*Standard Provision for Policies of Group Life Insurance.* No policy of group insurance shall be issued or delivered in this Commonwealth unless and until a copy of the form thereof has been filed with the Insurance Commissioner and formally approved by him nor shall such policy be so issued or delivered unless it contains in substance the following provisions:

"(a) - - - - -

"(b) A provision that the policy, the application of the employer, the individual applications, if any, of the employees insured, shall constitute the entire contract between the parties, and that all statements made by the employer or by the individual employees, shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used as a defense to claims under the policy, unless it is contained in a written application.

"(c) - - - - -

"(d) A provision that the company will issue to the employer for delivery to the employee whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with provisions to the effect that in case of the termination of the employment for any reason whatsoever, the employee shall be entitled to have issued to him by the company, without further evidence of the insurability, and upon application made to the company within 31 days after such termination, and upon the payment of the premium applicable to the class or risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one of the forms customarily issued by the company, except term insurance, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination.

"(e) - - - - -

"Except as provided in this act, it shall be unlawful to make a contract of life insurance covering a group in this Commonwealth."